



**BUILDING HEALING ALTERNATIVES TO CUSTODY:
OBSERVATIONS FROM THE FRONT LINES
OF ABORIGINAL JUSTICE**

A discussion paper prepared by:

Rupert Ross
Assistant Crown Attorney
Kenora, Ontario.
Spring, 2009

Disclaimer:

All of the opinions expressed herein are personal to the author, and do not represent the analysis or conclusions of any branch of government.

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A. INTRODUCTION

This paper is written in the hope that it will inform discussions focussed on re-examining aboriginal justice and improving the provision of healing-based programs that could be relied upon as effective alternatives to custody. As a crown attorney in north-western Ontario for over 20 years, I have seen first-hand the traumatic consequences of the residential school system and other strategies of colonization, leaving many men, women, and children trapped in cycles of addictions, abuse, self-harm and neglect. To this point in time, the justice and healing sectors have operated largely in their own silos, and I am encouraged that both are not only re-examining their own strategies but also exploring a more cooperative relationship.

While I want to help provide an accurate understanding of the challenges and opportunities that now exist on-the-ground in First Nations communities, I also want to identify those areas where I believe more detailed information must be obtained before reformation plans are made.

As a caveat, I should indicate that all of my work has involved only First Nations people; I have had no experience with Inuit people, their communities, or their interaction with the criminal justice system, though my reading suggests there may well be some similarities.

I do not expect that all front-line justice workers will share my every concern. In fact, I suspect that I have become jaundiced in my view of many things; 20 years working within the trauma of rape, murder, the incessant battering of intimate partners and the heart-wrenching abuse of children has taken its toll on my optimism. All I really hope to accomplish is the *raising* of issues that may have escaped the attention of those who have not done front-line duty in this challenging arena.

I apologize for heavy reliance on bullet-point writing, but it is all that time allows.

B. WHAT ABORIGINAL PEOPLE ARE WE TALKING ABOUT?

In my region, aboriginal victims, witnesses and accused come out of three distinct settings:

- Some live in remote, self-contained First Nations communities served by fly-in courts and governed under the Indian Act by Chief and Council;
- Others live in First Nations communities that are connected by road to neighbouring urban centers, with all criminal charges being heard in courts held in those urban centers;
- Still others have chosen to leave their First Nations communities and take up residence in the urban centers, and their charges too are heard in urban courts.

Because each of these settings involves different social, political, geographical and economic circumstances, they present very different challenges and opportunities for justice reform. For instance:

- While it may be much easier to create opportunities for community participation in court processes in the self-contained, remote communities, their capacity to create and sustain rehabilitative programming is significantly hindered by their isolation, population size and limited resources;
- While residents of road-connected First Nations communities have greater access to rehabilitative programming in urban centres than their northern brethren, it remains difficult for their communities to become engaged with urban-based court processes in the creation of promising sentencing regimes, just as it is difficult for urban-centered probation officers to take an active supervision role in the distant home communities;
- While urban residents may not be able to count on significant assistance from their home communities, their daily presence in the urban environment may yield greater opportunities for specific rehabilitative programming, as well as a greater variety of employment, recreational, educational, medical and social services that can help stabilize them and their families;

The situation of vulnerable people is radically different in each of the three geographical contexts, given that they involve very different degrees of mental, physical, emotional and spiritual isolation.

It must also be remembered that there are huge differences *between* First Nations communities, differences that must be accounted for in the design and delivery of justice and healing services:

- Many are healthy and need little intervention from the justice system, while others are deeply traumatized, despairing and violent; youth suicide, for instance, may be rampant in some communities and non-existent in others;
- Some are well-governed, some are governed by self-serving elites that will go to great lengths to protect their own, and others are in such social disarray that governance of any kind is barely visible;

- While most aboriginal communities are tiny, with adult populations of only several hundred people, others have population totals that exceed 2500 people, leading to very different capacities to create and sustain programming of any sort;
- Healthy communities might be best *able* to create and maintain community healing programs as an alternative to custody, but might be least *in need* of such expensive and labour-intensive activities;
- Severely traumatized communities, on the other hand, might be most in need of, sustained participation in courts or rehabilitative programming, but least *capable* of do so, at least until their capacities have been augmented by significant, protracted assistance.

Discussions about aboriginal justice and healing must, therefore, be clear about both the challenges and the opportunities presented by each of the three contexts, and must as well be careful to recognize contextual differences within each of those contexts. Unless capacity-building strategies are carefully tailored to those on-the-ground realities, much time and money will be wasted, and much frustration will ensue, for everyone. One strategy will clearly not fit all.

That being said, I suggest that there is one pressing issue that seems common to all three contexts, though it is perhaps most visible in the remote communities: a growing dissatisfaction with the goals and processes of the criminal justice system, and a growing refusal by individual victims and witnesses to participate in it.

If I am correct in this, it presents a singular challenge that goes to the very heart of our duty to protect vulnerable populations. If victims and witnesses will not testify, we gain no convictions, and we gain no right of intervention for *any* purpose, whether punitive or therapeutic. As a result, the abuse carries forward into the next generation.

C. IS THERE A GROWING WITHDRAWAL OF ABORIGINAL SUPPORT FOR THE GOALS AND PROCESSES OF WESTERN CRIMINAL JUSTICE?

To look at this issue, I want to turn to my experience in the *remote* First Nations of the region, where every court necessarily deals only with First Nations victims and witnesses, and their participation in criminal justice is more clearly visible.

Until the mid-eighties, there were almost no police officers living in the remote communities of my region; they attended on a call-in basis only, whenever something major took place. As a result, charges were few and court sittings were rare. As policing services expanded in the late eighties, and officers were stationed full-time in the communities, the number of charges grew (surprise!), and we began to schedule regular courts to deal with them. In one large and very troubled community, we now fly in to hold court twice a month; in some of the smaller, healthier communities, we may only attend once or twice a year.

I have therefore been on the ‘front lines’ since the criminal justice system *began* to be imported into those 20-plus First Nations, with all of its police, crowns, lawyers, judges, jails, probation officers, procedural complexities and professionalized adversariality.

I will never forget going into one small community that had never experienced a court before. It seemed like half the population had turned out, welcoming us as honoured guests. They organized a feast before court opened, serving up fresh trout, bannock, moose meat stew - and many welcoming speeches about partnership and problem-solving. On the next visit, however, the meal did not come until *after* we’d finished our business; we joked among ourselves that they wanted to see what we were going to do with a particular accused before deciding whether we’d be fed or not. Since then, there have been no more feasts. While we’ve been treated politely, we are clearly not as ‘welcome’ as we were at first.

In the beginning, another dynamic was striking: as far as we could tell, victims and offenders alike were completely forthcoming with us. No one lied, or tried to hide the truth. I recall one accused who told the court that, while his lawyer said he could use the white man’s law to defeat the accusations made against him (by relying on the *Charter*), he had decided not to do that. The Elders knew he had done wrong and it was his responsibility to acknowledge it. We don’t see that anymore.

Most troubling, however, is this: I sense that an increasing number of victims are refusing to let us bring what they see as *their* problems into *our* court. Many will not give written statements to the police in the first place. Of those who do, an increasing portion will not repeat their allegations when the court arrives. One by one, they seem to have looked at our justice system and decided to vote with their feet.

This apparent withdrawal of cooperation is even more pronounced with witnesses. With increasing frequency they tell police that they were not present at all, or were in another room, or too drunk to remember. Many simply refuse to give any kind of statement at all.

I will never forget meeting recently with three different spousal-assault victims to prepare them for court the next day: each of them absolutely refused to say a single word. No hello, no goodbye, nothing, not even when desperation prompted me to promise that my goal was not to send their assailant to jail but to see what we could do to bring some healing to everyone concerned. The only time I thought I saw an expression flit across their immobile faces was when I told them that I simply couldn’t help them if they wouldn’t speak with me, and the expression I thought I saw was relief. They simply got up and left, I had to withdraw the charges, and the accused went home smiling.

Others may feel that the situation is not as dire as I suggest, that things are chugging along in the aboriginal justice context with just as much support and participation as in the non-aboriginal setting, particularly in the spousal assault context, where victim withdrawal is common everywhere.

In my view, however, we cannot guess about this. We need to *know* if vulnerable aboriginal people are increasingly turning away from what we offer, because they are the reason we exist.

My first suggestion, then, is straight-forward: we need to gather the impressions of a much wider range of front-line justice professionals like crown attorneys and victim services personnel working with aboriginal populations across Canada. We need to ask them a series of questions, such as:

- What level of support for criminal prosecutions are you seeing
 - From victims?
 - From witnesses?
 - From community leaders?
- Is that level of support less than, more than, or comparable to, the level of support you experience in the non-aboriginal context?
- Is that level of support increasing, decreasing or holding steady?
- Is there a difference in that level of support depending upon whether the court is held in the aboriginal community itself or in the neighbouring non-aboriginal, urban centre?
- Are there particular categories of cases where lack of victim support is especially pronounced, and if so, which categories:
 - Family violence?
 - Child abuse?
 - Historic sexual abuse?
 - Youth violence?
- What techniques have you developed to:
 - Increase victim participation?
 - Get victim evidence before the court *without* their participation?

Every crown attorney or victim-services professional in Canada is connected by computer. Those who work primarily in a First Nations or Inuit context can easily be identified within the various prosecution services, and computer surveys can now be done in ways that guarantee complete anonymity. *Not* to know if this is a common phenomenon seems ostrich-like to me, given our overriding duty to serve those vulnerable people as best we can.

If I am correct in my perception that there are *especially* pronounced, and growing, levels of non-support in the aboriginal context, the next step is obvious: we must do what we can to find out *why*. I have my own suspicions, having worked so long with victims and witnesses in every kind of case imaginable. To jump-start the discussion, I will briefly summarize what I think I have seen.

D. EXPLORING THE RELUCTANCE TO SUPPORT PROSECUTIONS

To this point in time, I think I have identified three different forces at work:

- Concern about cooperating – and being seen to cooperate – with another system imposed by ‘the colonizers’;
- Criticism about its lack of focus on problem-solving; and
- The looming threat of jail in every prosecution

I’ll deal with each separately.

(1) Working With The Colonizers

It has taken me a long time to see it, but I suspect that many aboriginal people, especially those living in self-contained communities, *start* with the assumption that the outside justice system is just that, an *outside* system. It is not theirs. It is a system imposed by the colonizing society, the same society that also imposed things like the residential school system, laws that restricted or prohibited their fishing and hunting, their ceremonies and a host of other traditional ways-of-living on the land, and with each other. As such, I suspect that while they feel an obligation to approach us with initial respect, they adopt a wait-and-see approach until becoming more familiar with our goals, processes and impacts, taking time to explore whether it will prove to be just another source of damage to their already-fragile social existence.

I recall television coverage of a drive-by shooting on a First Nation in western Canada where such events were becoming far too common. A young toddler inside a house was struck, and its mother was being interviewed. She agreed that everybody knew who the young men were who had formed into gangs and were carrying on in this violent way. The problem with telling the ‘authorities’ who they were, she said, was that everyone also knew them as members of their community, people they had known through their troubled childhood. That made ‘turning them over’ difficult. I was struck by the degree to which people would rather live with their own internal violence than hand their violent people over to ‘the outsiders’.

As I presently see it, prosecution in “our” way is exactly that, *our* way, and our way is neither automatically welcomed nor unquestioningly supported. It depends on what our way is intended to accomplish, and what it actually brings about.

That takes us to what I see as a second reason for the non-support I detect: after experience, many have concluded that the outside system does not do what they expected it would, which was join them in problem-solving.

(2) Our Lack Of Focus On Problem-Solving

I recall, many years ago, after a guilty plea had been entered on a spousal assault case in a remote community, coming to the sentencing discussions. An Elder asked us how we could go ahead to the final resolution without the man’s wife present. I quickly shot to my feet and expounded on how she need not be there, it was not *her* activities being

scrutinized or *her* behaviour that needed denunciation, and we should keep our attention squarely where it belonged, on the man who had broken the law and abused her. The Elder looked puzzled, then sat down. Years later, I came to an understanding of his puzzlement: he did not yet know that our court was primarily there to blame, denounce and punish an individual wrongdoer. Instead, he thought it was there to help restore healthy relations between two people who obviously needed assistance, and it was obvious to him that you cannot restore good relations by working with only one of the people involved. I had failed to see that he had an entirely different picture of why we were there.

I also recall, many years ago, a report on family violence prepared by the National Action Committee On The Status Of Women. It naturally urged significant resources for counseling work with abused women. The aboriginal women on the panel urged similar resources for the men as well. The non-aboriginal majority were so hostile to that notion, however, that it had to be put in a separate, minority portion of the report. The two cultures do not seem to come at these issues with the same perspective, and I have seen little sign that we have convinced aboriginal people that our approach is more productive.

(3) Our Reliance On Jail

In my experience, the most pronounced withdrawal of victim and witness support occurs the moment they know we are seeking a jail term. I think there are many factors at work here, and they are central to justice discussions.

First, the remote communities of my region have now had 20 years of experience with people being taken off to jail. Increasingly, I hear community leaders say that, in their opinion, those people have not returned ‘healthier’ than when they left. To the contrary, they too frequently return with a frightening criminal arrogance, their skills of intimidation and criminal activity significantly enlarged. In communities where many young people already feel a pervasive lack of identity, purpose and power, gaining a criminal identity often has significant appeal. It is also clear that these ‘returning heroes’ are the ones responsible for developing the drug transportation networks that are now flourishing across the north. In the result, some communities see the imposition of jail as contributing not to community health, but to further community harm.

From my own perspective, we make an error in *assuming* that aboriginal communities share our belief that specific and general deterrence can be achieved by the threat of jail, especially in those communities mired in deep poverty, debilitating depression and chronic substance abuse.

Second, traditional ethics disapproved of adversarial, face-to-face confrontation as a means of dealing with disputes, precisely what our rule against hearsay demands. Where our in-court confrontation is aimed at imposing punishment instead of exploring relational rehabilitation, the cultural reluctance to participate intensifies. In some communities, saying accusatory things about someone, face-to-face, in a public courtroom with others watching, while sober and thoughtful, knowing that the result is

likely to be jail, is more reprehensible than the unthinking, drunken violence used by the accused.

Third, victims, witnesses and offenders alike all have to live the rest of their lives with each other, side by side, in those tiny communities, and they simply can't afford to see animosities intensified. There are enough already.

Fourth, abuse of all kinds has now become so common in some communities that anyone who stands up to it by reporting it to the outside system is seen as putting themselves 'above' everyone else. I have watched siblings of sexual abuse victims gang up on the child who disclosed, saying "We put up with it; what makes you think you are so special?" I have seen women throwing rocks at police cars, trying to stop them from taking abused women and children out to shelters and thereby 'deserting' their husbands. In tiny, isolated communities, keeping the few relationships you have is often far more important than calling your abuser to account – especially if it means jail. I can no longer pressure little girls to self-isolate by testifying against their fathers, brothers, uncles or grandfathers, because they already have enough reasons to see suicide as a reasonable alternative.

Fifth, there are communities where the power elite will go to great lengths to protect their own from prosecution, and to punish anyone who opposes them. That punishment will not be immediate, nor will it be visible enough to charge obstruction of justice. It will appear in the form of discriminatory decisions related to housing, jobs and educational opportunities in the outside world. Even direct threats are seldom prosecutable, simply because we are right back to the underlying problem: who is going to testify about those threats and risk even *further* wrath?

Once again, these are just my impressions, and they may not be shared elsewhere. I suggest, however, that we need to find out, to gather better information from prosecutors and victim-services personnel about how pervasive this fear of family shunning and community repercussion really is. The unfortunate reality is that, however strong they are, they are probably beyond the reach of the criminal justice system, and may take decades to change. In the short term, we may just have to find ways to work around those realities.

The *only* way I can see at the moment is to sharply reduce our reliance on custody and turn instead towards rehabilitative sentencing. People are far more likely to plead guilty and spare victim and witness testimony if no jail is involved. I also suspect most victims would be grateful, for that would take them 'off the hook' for having disclosed, while still letting truths be told and pain validated, as well as permitting *some* degrees of protective and rehabilitative intervention.

I would be remiss if I did not at least mention one of the most powerful determinants of behaviour in many aboriginal communities: poverty. Derelict housing, welfare and large families impose special hardships on abused women, hardships they can seldom endure on their own. In my experience, the majority of abused women who see their husbands

taken out to jail quickly find themselves incapable of hauling wood and water on their own, feeding, clothing and caring for their children, and keeping the drunks and gas-sniffers away at night. On a routine basis they write to crown attorneys pleading for their partner's release, citing exactly those impossible demands. Any design of aboriginal justice must therefore face the reality that a great many vulnerable victims of domestic violence are forced by poverty to the awful conclusion that *his abuse is preferable to his absence*. In simple terms, they cannot *afford* to support a prosecution that will result in removal, whether during the bail stage or after sentencing.

This dynamic is a never-ending nightmare for crown attorneys. On a daily basis we are being asked to leave violent men in tiny communities with extremely limited policing and no shelters. If we do not acquiesce, we know that vulnerable women will have to fend for themselves in impossible conditions, and that most of them will feel no choice but to withdraw from the prosecution. When that happens, the truth is not told, there can be no intervention of any sort, and those violent men will correctly see themselves as immune from any future prosecution as well.

Poverty even figures into the *deterrence* capacity of jail. In one case, an abused woman asked the court to take *her* out to jail, so her abusive husband would have to shoulder all the household and child-rearing burdens while she got to watch TV in a warm place and have others serve her three good meals a day. In another case, a youth, who played only a minor role while his friends went on a destructive rampage, was so distraught when we did *not* take him into custody along with the others that he went on his *own* rampage as soon as the court plane left; he too wanted to go where there were good meals, no drunks, a television, canoes, ATV's and excursions into the wilderness, none of which he got at home. Jail may be an effective deterrent for people who have much to lose, but poverty guarantees that it means far less in the majority of First Nations communities.

These, then, are some of the on-the-ground realities that I believe are causing a slow-but-sure withdrawal of aboriginal support for particular prosecutions as long as their stated goal involves jail:

- Fear of family shunning
- Fear of repercussions from power elites
- Cultural rejection of openly confrontational processes
- A determination not to worsen inter-personal and inter-family animosities
- A concern that jail does more harm than good
- Surviving in extreme poverty

In my view, any discussion of criminal justice reform that fails to investigate these issues, and respond to the realities revealed, has little chance of producing on-the-ground protection for the vulnerable men, women and children who need it the most.

I therefore suggest explorations in several directions:

- We should ask other crown attorneys, and the staff of any Victim-Assistance programs that might exist, if they too have encountered a reluctance to participate in our prosecutions premised on these (or any other) factors;

- We should seek ways to explore such issues *directly with aboriginal victims and witnesses themselves*;
- We should ask everyone concerned what changes or new resources might respond effectively to those dynamics, perhaps exploring things like:
 - Half-way houses for men on remand or sentence so that they could live in their communities and help their families, but be under close supervision;
 - Shelters for women and children; and
 - The creation of family healing centers (a topic I'll return to later).

Front-line participants in aboriginal justice processes have a wealth experience and perspective on those issues, but they need a forum in which to share it. If we do not seek and use it, we are unnecessarily increasing the risk of doing things that are not needed, or will not work, as well as the risk of missing out on approaches that might.

I would now like to turn to something that is stressed by aboriginal people and communities in every part of Canada: the need for the justice system, in partnership with other government departments, to focus far more attention on healing than punishment.

E. THE CREATION OF HEALING RESOURCES

The criminal justice system is not designed, on its own, to accomplish healing objectives. It can, however, support the creation of healing programs, and incorporate them within its bail, case-resolution and sentencing functions. Indeed, the Criminal Code of Canada urges the courts to do just that, to seek alternatives to custody, and has conferred its blessing on delaying sentencing so that rehabilitative options can be explored and assessed. The Supreme Court of Canada reiterated that non-custodial emphasis in the *Gladue* decision.

I would go further and suggest that history and fairness also demand such a change in emphasis. As I argue in a recent paper, *Colonization and Criminal Conduct: Exploring the Link*, it is almost beyond dispute that most of the addictions, suicides and criminal conduct we see within First Nations and Inuit populations are directly traceable to all the strategies of colonization imposed by governments, especially residential schools. If that is so, then it seems grotesque for governments to now insist on its criminal courts punishing the very behaviour they brought into being. Surely the obligation is the opposite: to assist aboriginal people in their recovery from the trauma that governments set in motion in the first place.

I gather that justice discussions presently underway support the view that the justice system should begin a deeper partnership with the many healing or rehabilitative agencies active in aboriginal communities. This is heartening indeed, because we have been operating in silos of exclusivity for far too long, especially given the decades-old aboriginal insistence that justice should focus *centrally* on healing. I am also heartened by the fact that many prosecutors and judges appear to be entirely supportive; in fact, I

regularly hear complaints that the scarcity of healing resources often makes it impossible for them to do what they *want* to do, which is follow *Gladue's* encouragement.

The creation of effective healing resources, however, faces many on-the-ground challenges that need to be known and accounted for. For what they're worth, I offer (very!) summary descriptions of some aspects of those challenges that have come to my attention over the years.

(1) Youth Addictions & Suicide

Addicted and suicidal children are clearly the product of traumatized families. For that reason, it is not realistic to think that educational or rehabilitative programming directed to them as individuals will be effective. Even when they are removed from their communities, placed in safe rehabilitative settings and provided intensive rehabilitative treatment, as was the case with the children of Davis Inlet many years ago, the results will disappoint: when they are returned to their violent and addicted families, they will not be strong enough to resist being re-engulfed in the trauma that surrounds them, and their own destructive, escapist behaviours will resume in very short order.

(2) The Essential Ingredient: Whole-Family Healing

Many First Nations' teachings suggest that individuals may be better understood as the sum of all their relations, whether with other people, animals, plants or all other facets of Creation. Being healthy involves building relationships centered on values like respect, sharing, humility, generosity and the like: the Ojibway Seven Grandfather Teachings speaks directly to those issues. It necessarily follows that healing an individual requires examining not just the individual, but also his or her relations, and assisting all those involved to find healthier ways to interact with each other. In some cases, the healing process will give them their first-ever *experience* of relating to others in healthy ways. With that knowledge, and the 'strength-in-numbers' that a healthier family possesses, they stand a much better chance of continuing to help each other when they return to their community setting, resisting the forces that might draw them back into disarray. Once again, the experience of Davis Inlet is informative, for that community has now adopted *family* healing processes even in the addictions context, and is finding that family members are learning to communicate in healthy ways with each other and to establish trust with each other; for the children, the resulting sense of safety, worth and belonging is replacing their earlier need to hide, deny and escape.

(3) Restoring Inter-Personal Skills

I have watched a number of families given the opportunity for 'whole-family healing', and without exception they tell me that what the essence of what they learned involved two things:

- Learning how to talk with each other about all the things in their histories that have caused them grief, fear, regret and so forth, things they had never shared before, things they never knew about each other; and
- Learning how to trust that others will not abuse those confidences

I remember one couple who, when they were finally helped to begin connecting emotionally with each other, learned that they each came from drunken, violent homes. As a result, when one of them now heard the other's voice signaling displeasure, images of their parents' quick descent into violence arose with such force that they over-reacted. That over-reaction in turn prompted a similar over-reaction in the other, and before they knew it they were re-enacting exactly what they feared most. Healing involved discovering what their learned patterns were, where they came from, and developing healthier patterns instead. That is not something that individual therapy can accomplish on its own.

In that regard, I recently reviewed a study of men involved in family violence. Testing revealed that they all showed substantial deficits in the skill-sets associated with what is called Emotional Intelligence, or EQ. It described them as being:

- unable to verbally articulate their feelings, thoughts, needs and emotions in a non-destructive way;
- emotionally dependent and unable to form and maintain healthy intimate relations;
- insecure, and fearfully attached to their intimate partners, causing them to experience high levels of anxiety
- so lacking in reflective insight that they projected their anger and fear onto their partners;
- extremely sensitive to criticism and the threat of rejection;
- unable to express their feelings verbally, causing them to fall back on aggressive behaviour instead;
- unable to recognize and properly process their emotions; and
- unable to interact with others in an empathetic way

I have not yet explored the connection, but I suspect that these are exactly the interpersonal skill-sets that could *not* have been developed by frightened children isolated in residential schools. As a result, they would not have been able to demonstrate those skill-sets when they had children of their own, leading to exactly the "broken-family" situations that are so common today. If you grew up without those experiences, how could you replicate them with your own children? When aboriginal people speak of the need to learn 'parenting skills', I suspect they refer to far more than just nutritional or disciplinary issues, and instead mean to emphasize all of the nurturing, listening, trusting, sharing and empathy-based skills that are the subject of EQ studies.

Interestingly, I have come across a partnership between Trent University's Emotion and Health Research Library and an aboriginal healing program in southeastern Ontario called the Red Path Program. Together, they conducted an experiment with a number of aboriginal men serving penitentiary sentences, all of whom showed substantial EQ

deficits. They were immersed in a course of traditional teachings, storytelling, ceremonies, talking circles and other aboriginal healing processes. In being re-tested, it was clear there had been “a significant increase in various dimensions of emotional intelligence”; they had gained essential skills in relating to others in healthier ways.

Two questions arise:

- if that short immersion could bring about that much change in men so damaged and violent that they found themselves serving federal jail sentences, how much help could be brought to lesser-troubled couples and their children?
- If the depletion of those EQ skill-sets is at the heart of family and community breakdown, and that depletion is indeed traceable to residential schools, do governments (and their justice systems) not have an obligation to now do whatever they can to bring those skill-sets back to prominence once again?

(4) Healing In The Home-Community

I have dealt with many troubled couples who wanted to engage with family healing programs. Without exception, they would only do so *outside of* their home community.

On reflection, their position is easy to understand. Once they began to learn to trust each other with their feelings and the events in their histories that had caused them fear, grief or pain, they would start naming names, telling long-held secrets about who did what to whom. Many of those named persons would still be alive, and in tiny communities they might be living right next door. If any of those stories ‘got out’, there would be immense disruption and unknowable consequences. That was why people chose to keep the secrets in the first place.

The fear of abuse stories ‘getting out’ is so great that it even imperils the work of *outside* mental health professionals coming into the community. Many times I have offered to put troubled families in touch with those visiting therapists, and vouched for their commitment to confidentiality, only to be met with responses like “Yes, but they’ll keep files, and someone at the nursing station might see them.” That concern for secrets getting out imperils virtually all forms of counseling; the Executive Director of a residential *alcohol* treatment centre once told me that 100% of the people going through her program ultimately disclosed sexual abuse before the program ended.

I therefore suggest that great care be taken in considering how much “in-community” programming should be contemplated. The simple fear of secrets-coming-home-to-haunt could well imperil not only initial attendance but also fulsome disclosure of the causative forces behind the unhealthy adaptive behaviour.

(5) Assessing Community Capacity

It is often said that only communities can heal themselves, and each community has the capacity to do so, by reaching back into its traditions, relying on its Elders and re-invigorating its commitment to healthy relations.

I entirely agree that Elders and traditions are likely the only sources for ultimate community recovery; the essential healing issue, after all, boils down to a process of decolonization. I also agree that there is huge diversity in aboriginal traditions and cultures, such that one healing regime may well have little resonance for people of different languages and traditions. I also agree that outsiders cannot heal a community, and that it must come from within.

That does not mean, however, that I believe every individual community, even with extensive outside assistance, has the present capacity to design, create and sustain effective healing programs. In my view, many simply don't have the human resources, no matter how much money is dedicated to the task.

There are more than 500 First Nations communities in Canada with band lists showing fewer than 1,000 people. A substantial portion of those people do not actually live in the community, but only visit from time to time. Just as importantly, half of the actual population is under the age of 25. That means that over 90% of all First Nations communities have average adult populations hovering around 400 people, and many are much smaller than that. Those few adults must administer education, fire protection, roads, house-building and maintenance, policing, welfare, health services, recreation facilities, sewage and or water-delivery, child care and a plethora of social services. Getting funding for all those activities involves applications to government, and maintaining records acceptable to government. I frankly think it is nothing short miraculous to see how well those very few people do, especially when you consider a statistically lower level of educational attainment that often prevails.

I suggest we have to look very carefully before considering healing programs that suppose each and every needy community will have the human capacity to take on such things as the design of community wellness plans, the forming of community wellness teams or the long-term maintenance of community wellness programs. We must also consider that every layer of government demand for program reporting and evaluation only serves to increase what may already be an unmanageable burden. I have watched many well-intended community programs fall by the wayside simply due to community fatigue, especially where it was one or two people who spearheaded the healing initiative. We must also be alert to the fact that the communities that most *need* solid programming to deal with solvent-abuse, suicide, family-healing, alcoholism and sexual abuse are often the ones least able to maintain them.

There are, of course, encouraging exceptions like Hollow Water, a tiny Ojibway community in Manitoba that has created a sophisticated and enduring healing program around the issue of sexual abuse. However, the very fact that it has been so seldom replicated across Canada, despite having shared its wisdom far and wide, should be cause for hesitation in assuming that each and every community has the same capacity, if only

government provides the funding. One of their central lessons was the need to “first heal the healers” before they began to take on the trauma of others; if that is not done, then the revelation of secrets into unsafe processes will only magnify the trauma’s power.

(6) Centralizing Healing Resources

For the various reasons canvassed above, it may be neither efficient nor productive to attempt the construction of sophisticated healing resources in each of the needy aboriginal communities in Canada. Instead, consideration might be given to focusing attention on *groupings* of communities, and giving them the resources to design, create, maintain and administer centralized healing resources for the benefit of their member communities. A number of advantages suggest themselves:

- The ‘pooling’ of both human and financial resources might lead to greater healing expertise, staffing stability, administrative skill and program longevity;
- There would be less concern about breaches of confidentiality, and a greater willingness to make full disclosure of all the causative forces (and people) behind the destructive behaviours being brought into the healing process;
- There could be clear and focused reliance on the unique cultural traditions and processes of the grouped communities, and a less onerous burden placed on Elders, than if there were numerous programs all similarly reliant on their presence and direction.

There might be another benefit as well, perhaps the largest one over the long term. The Harvard Study indicated that healing program success depended wholly on returning authority and responsibility. Centralized healing programs designed, created and maintained entirely by aboriginal people may not amount to *community* autonomy, but it is a long step away from having the intense bureaucratic involvement of non-aboriginal people that would be necessary to create and maintain effective healing programs in tiny communities with severely limited human resources of their own. In time, culture-specific, centralized, multi-community facilities could produce enough healed and experienced people – and the faith that healing is possible – that they could on their own initiative take up the challenge back in their home communities.

(7) The Challenge Of Historic Sexual Assault

I suggest that the issue of historic sexual assault is perhaps the most challenging issue of all, for several reasons:

- As Hollow Water has demonstrated, the histories of sexual assault, especially within families, weave poisonously back through several generations. In some communities, aboriginal estimates suggest that as many as 80% of some populations, male and female alike, may have been victims, or abusers, or both;
- The historic sexual assault of students *by other students* within residential schools may have been much more widespread than is presently acknowledged, with the result that people who abused and *were* abused as students many years ago are to this day rubbing shoulders within aboriginal communities, their relationships

mired in unspoken grief, anger, fear, confusion and, I suspect, substantial guilt. Those unresolved conflicts may be the quiet poison that too often infects community politics and causes much of the division and hostility we see today;

- Those secrets must be told, that pain must be validated, and that abuse acknowledged, before individuals, families and, I suspect, some communities, can move into health;
- If the *only* forum for that truth-telling is the criminal court, many of the secrets will never be told, because putting large numbers of people in jail is something very few see as being of benefit to anyone, and the criminal courts have grave difficulty considering any sentence *other than* lengthy custody for such cases, especially where the sexual abuse of children is concerned;
- Western society has not yet created any *other* forum for the safe and therapeutic confrontation of truths around sexual assault between those who harmed and those who have been harmed.

It will be obvious from the above that I think we need to investigate the creation of other processes for safe and therapeutic confrontation, much like Hollow Water accomplished on its own. We might, for instance, consider the following:

- Locating them outside of particular communities, as discussed above, to alleviate confidentiality concerns;
- Having them serve groupings of communities with common original languages and traditions;
- Developing a core of staff trained in traditional and western victim-offender peacemaking appropriate to the surrounding aboriginal culture;
- Maintaining a determination to incorporate family healing into the individual *and* victim-offender healing processes;
- Having them designed and operated by a multi-community *aboriginal* administration with very substantial control and long-term funding.

If they were established, would there be any role at all for the criminal court, or the administration of justice in general? I have heard a number of suggestions:

- That the *threat* of prosecution and custody may well be necessary to keep offenders committed to the very painful, long-term process of acknowledgement, taking emotional responsibility, and making the personal change required for true healing;
- That consideration be given to an amnesty for student-upon-student sexual abuse, provided victims approve, abusers are willing to participate in a peacemaking process with their victims, and there are no continuing safety concerns, in recognition of the fact that it was the intrinsically violent character of those institutions that was the originating cause of that abuse;
- That crown attorneys be given much more latitude to stay charges where victims advise that healing and peacemaking processes have given them the satisfaction they require, and where there are no further safety concerns on the evidence available.

(8) Balancing The Mental, Emotional, Spiritual and *Physical* Dimensions

While this issues is well outside the ambit of either justice or healing discussions, it must nevertheless be raised: no matter how much effort is put into making sure that secrets are revealed, relationships are made safer and spiritual dimensions are nourished once again, it is difficult to see how individuals, families and communities can truly achieve health as long as their *physical* health remains imperiled in so many ways. How, for example, is it possible to sustain mental, emotional and spiritual health if:

- 15 people from three or more generations are trying to live in a single, broken-down, moldy, two-bedroom house with no running water?
- the water that is available is unsafe to drink or cook with?
- the available food is unhealthy and disproportionately expensive?
- Diseases like diabetes and tuberculosis are as common as they are?

A truly effective partnership aimed at helping First Nations return to health must therefore extend beyond the health and justice sectors, and I suggest that this need must be underlined in *every* discussion about aboriginal recovery from the impact of colonization.

F. INTERNAL JUSTICE SYSTEM INITIATIVES

Clearly, it will not fall to the justice system to design and establish the kinds of healing resources needed to provide rehabilitative alternatives to custody. That does not mean, however, that it has no role except waiting for those resources to come on-stream. I offer the following suggestions about initiatives that could be undertaken now:

- (1) As argued above, fruitful reformation of the justice system demands accurate information about on-the-ground realities, as well as informed suggestions for improvement. Two of the best sources of that information are Crown Attorneys and Victim-Services personnel. The various departments of justice are thus best placed to obtain information from them, whether by electronic surveys, conferences, working groups or a combination of them. No one else has that capacity.
- (2) Crown Attorneys are guided by policy manuals establishing the limits of their discretion in all matters, including release on bail, victim consultation, diversion, the structure of the sentencing process, and the kinds of sentencing recommendations that are appropriate to various classes of offence. Discussions could start to determine whether modifications to those policy manuals might result in greater support for the rehabilitative goals encouraged by *Gladue* and preferred by the communities themselves.
- (3) With respect to family violence, crown policy might be reviewed with an eye to determining:
 - Whether sufficient attention, support and recognition is given to *aboriginal* spousal assault programs, especially in jurisdictions where completion of ‘accredited’ programs can result in absolute or conditional discharges;

- Whether more support could be provided to the creation of *family-centered* spousal assault programs;
- Whether victims services agencies have explored the possibility that aboriginal victims may have a distinct preference for peacemaking over prosecution, where such peacemaking services might be provided, and how victims might be assisted in taking advantage of them;
- Whether it might be less expensive to support supervised *community* placements for offenders at the bail and post-sentencing stages than keeping them in jail, especially if the ultimate ‘cost’ of keeping them in jail is the loss of victim support for the prosecution, the withdrawal of charges and the evaporation of intervention possibilities.

(4) The various justice departments might consider coming together to create a *common* educational platform with respect to:

- aboriginal history;
- the relationship between the forces of colonization and the social turmoil seen today; and
- the nature and promise of aboriginal approaches to justice and healing.

That educational platform might then be shared with *all* criminal justice professionals, including police, crowns, the defence bar, judges, probation and parole staff and victim assistance programs. In that way, we might begin working together, with a common vision of both the causes of criminal behaviour and the kinds of healing responses that might be most productive in the long run, especially in the complex area of historic sexual assault within families and within residential schools.

G. CONCLUSION

Whatever decisions are ultimately made with respect to reformation of criminal justice and the improvement of healing strategies, I suggest that three things are clear:

- Even the wisest decisions will take many years to bear fruit, just as it has taken many generations for the damage caused by colonization to penetrate so deeply;
- For the same reason, whatever is done will also be costly, demanding that we begin with the clearest possible picture of where the needs are most pronounced, and the chances for successful contribution most promising; and
- Nothing of substance will happen as long as operational silos are maintained by the many outside agencies presently touching, and so frequently determining, the lives of aboriginal individuals, families and communities. While those silos may not cause harm in major urban centers like Toronto or Vancouver, they stand as major impediments to the development of comprehensive and effective healing and justice strategies in the tiny aboriginal communities that need them most.

